

PACA Docket No. D-98-0007

Decision Without Hearing By Reason of Admissions

This disciplinary proceeding, brought under the Perishable Agricultural Commodities Act, 1930, as amended, (7 U.S.C. §499a *et seq.*) (PACA), was initiated on December 30, 1997 by a complaint alleging that Respondent wilfully, flagrantly, and repeatedly violated Section 2(4) of the PACA (7 U.S.C. §499b(4)) by failing to make full payment promptly of the purchase prices, in the total amount of \$354,420.43, to nine (9) sellers for 44 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce during May 1996 and June 1996. The complaint requests a finding that Respondent committed wilful, flagrant, and repeated violations of Section 2(4) of the PACA (7 U.S.C. §499b(4)) and an order that the facts and circumstances of its violations be published.

Respondent was served with the complaint by regular mail on February 18, 1998, after service by certified mail was unsuccessful—having been returned as unclaimed. On March 26, 1998, Respondent filed an answer admitting the allegations in sections II and III of the complaint, but denied that it owed the amounts claimed as past due. Respondent's answer states that it filed a Chapter 11 bankruptcy petition which it claimed would enable it to make full payment to its creditors. A copy of Respondent's bankruptcy petition which was filed on October 22, 1997 in the U.S. Bankruptcy Court for the District of Arizona (Case No. B-9714458 PHX RGM), was attached to a motion filed by Complainant requesting the issuance of a Decision Without Hearing by Reason of Admissions.

The bankruptcy petition includes a list of the creditors holding the twenty largest unsecured claims against Respondent, hereinafter referred to as the "List of Unpaid Creditors", in which Respondent admits that it is indebted to six out of the nine sellers named in the complaint, for at least \$311,846.03 out of the \$319,551.48 which the complaint alleges that it owes those six sellers. Respondent's answer also admits that it failed to make full payment promptly to the remaining three sellers listed in the complaint, but not in the List of Unpaid Creditors, denying that it owes the amounts alleged as past due. Respondent's admissions warrant the immediate issuance of a decision finding that it has committed wilful, flagrant, and repeated violations of Section 2(4) of the PACA and ordering the publication of the facts and circumstances of its violations.

On motion of Complainant for the issuance of a Decision Without Hearing by Reason of Admissions, the following decision is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice governing this proceeding (7 C.F.R. §1.139), hereinafter referred to as the "Rules of Practice".

Findings of Fact

1. Romney & Assoc., Inc., also trading as R & R Distributing, herein referred to as Respondent, is a corporation organized and existing under the laws of the State of Arizona with a business mailing address of 2049 North Doran, Mesa, Arizona 85203.

2. At all times material to this matter, Respondent operated subject to the PACA. PACA license number 941065 was issued to Respondent on April 25, 1994, and was suspended on January 14, 1997, pursuant to section 7(d) of the PACA (7 U.S.C. §499g(d)), because Respondent failed to pay a reparation award that had been entered against it. Respondent's PACA license was terminated on April 25, 1997, pursuant to section 4(a) of the PACA (7 U.S.C. §499d(a)), because it failed to pay the required annual renewal fee .

3. On October 22, 1997, Respondent filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. §1100 *et seq.*), designated case No. B-9714458 PHX RGM, in the U.S. Bankruptcy Court for the District of Arizona.

4. In Respondent's List of Unpaid Creditors and answer, it admitted that it failed to make full payment promptly, for at least \$311,846.03, to nine sellers for at least 44 loads of perishable agricultural commodities which it purchased in interstate commerce during May 1996 and June 1996.

Conclusions

Respondent does not have a valid or effective PACA license and has admitted to actions which constitute wilful, flagrant, and repeated violations of Section 2(4) of the PACA (7 U.S.C. §499b(4)). Accordingly, the following Order is issued.

Order

Respondent is found to have committed wilful, flagrant, and repeated violations of Section 2(4) of the PACA (7 U.S.C. §499b(4)).

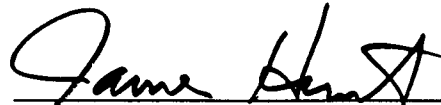
The facts and circumstances of Respondent's violations of the PACA shall be published.

This Decision will become final without further proceedings thirty-five (35) days after service hereof, unless appealed to the Secretary by a party to the proceeding within thirty (30) days after service, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§1.139, 1.145).

Copies hereof shall be served on the parties.

Done at Washington, D.C.

September 15, 1998

A handwritten signature in black ink, appearing to read "James W. Hunt", with a stylized flourish at the end.

JAMES W. HUNT
Administrative Law Judge